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OF RACIAL DISCRIMINATION

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 9 OF THE CONVENTION

Sixth periodic reports of States parties due in 1993

Addendum

SRI LANKA*

[29 July 1994]

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* The present document contains the third, fourth, fifth and sixth periodic reports which were due on 20 March 1987, 1989, 1991 and 1993 respectively. For the second periodic report of Sri Lanka and the summary records of the meetings at which the Committee considered that report, see documents CERD/C/126/Add.2 and CERD/C/SR.764 and 765.

The information submitted by Sri Lanka in accordance with the consolidated guidelines concerning the initial part of reports of States parties is contained in the core document (HRI/CORE/1/Add.48).

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II. Government of Ceylon legislative enactments. Penal Code (1956 revision)

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IV. Commission of Inquiry Act No. 17 of 1948.

1/ The annexes, as submitted in English, can be consulted in the archives of the Centre for Human Rights.

Introduction

1. Article 27 (5) of the Constitution of Sri Lanka, which lays down the directive principles of State policy to guide Parliament, the President and the Cabinet of Ministers in the enactment of laws and the governance of Sri Lanka, provides that the State shall strengthen national unity by promoting cooperation and mutual confidence among all sections of the people of Sri Lanka, including the racial, religious, linguistic and other groups, and shall take effective steps in the field of teaching, education and information in order to eliminate discrimination and prejudice.

2. Furthermore, the Fundamental Rights chapter in the Constitution expressly provides that no citizen shall be discriminated against on grounds of race, religion, language, caste, sex, political opinion or any other grounds and that no person shall be subject to any disability, liability, restriction or condition with regard to access to shops, public restaurants, hotels, places of public entertainment and places of public worship of his own religion on grounds of race, religion or language.

3. Within this framework the Government of Sri Lanka is committed to ensuring to all citizens irrespective of racial differences the enjoyment and exercise on an equal footing of all rights and freedoms in the political, economic, social and cultural fields.

4. Conflicts between the linguistic and religious groups in Sri Lanka have occurred from time to time. However, by and large these conflicts have been transitory and relations amongst these groups have been peaceful. The exception has been the growing rift between the Sinhalese and the Tamil communities in the last few decades as a direct result of resort to acts of violence by extremist groups. The Committee is already aware that the Government is fighting a bloody campaign of terror in the north and east of the country launched by Tamil guerrillas whose aim is to create a separate mono-ethnic one-party State in the north and east by violent means.

5. The Government is committed to a negotiated political settlement and continues to explore all avenues for a positive solution. Over the last 10 years, constitutional changes have been effected in order to meet the legitimate demands of the Tamil people on critical issues like devolution and language rights. These constitutional changes have been arrived at after thorough and painstaking dialogue and negotiation. These measures have succeeded in persuading even extremist Tamil groups to join the democratic mainstream. The Liberation Tigers of Tamil Eelam (LTTE) alone has refused to enter the democratic process.

Article 2

6. The 1978 Constitution made far-reaching changes in the field of human rights. Special provision was made with regard to elimination of racial discrimination.

7. Article 12 (2) of the Constitution provides that no citizen shall be discriminated against on grounds of race, religion, language, caste, sex, political opinion or place of birth.

8. Article 12 (3) provides that no person shall be subject to any disability, liability, restriction or condition with regard to access to shops, public restaurants, hotels, places of public entertainment and places of public worship of his own religion on grounds of race, religion, language, caste or sex.

9. Article 14 provides for the freedom to manifest one's own religion or belief by practice, and the freedom to promote a person's language and culture.

10. The Government has taken a number of measures in the social, economic, cultural and other fields to ensure the adequate development and protection of racial groups.

Participation in politics

11. In the context of Sri Lanka the failure of decentralization experiments meant growing political and social marginalization of increasing sections of the population. In a situation of limited resources and opportunities, social and economic marginalization took on ethnic overtones constituting the backdrop to a demand for devolution of power.

12. In response to these demands of minority groups, the 13th amendment to the Constitution devolved administrative power on nine provincial councils. Provincial councils are a landmark in the political and social institutions of Sri Lanka. Under this system elected representatives of the people at subnational levels exercise legislative powers for the first time. Provincial councils are vested with powers to make statutes applicable within their provinces in respect of a wide range of subjects set out in the Provincial Councils List, which include the power to make laws relating to police and public order, local government, health, social service and rehabilitation, etc. It may also pass other laws set out in the Concurrent List, in consultation with Parliament.

13. Furthermore, the 1978 Constitution introduced a system of proportional representation for election to Parliament replacing the simple plurality or the first-past-the-post system which had existed since independence. Under the system of territorial representation based on plurality ethnic minorities were not adequately represented in Parliament. However multi-member constituencies under the system of proportional representation makes it possible for ethnic minorities, including small ethnic groups, to elect their representatives to Parliament.

14. In addition to these positive measures the Government continues its dialogue with recognized political parties of the Tamil and other communities, which began within the framework of the All Party Conference and later through the Parliamentary Select Committee.

15. The Parliamentary Select Committee was established on 9 August 1991 by Parliament:

(i) To bring about a political solution to the question of devolution of power to the Northern and Eastern Provinces;

(ii) To prevent disintegration of the nation, and the killing of innocent civilians, members of the armed forces and young people fighting for a cause;

(iii) To achieve peace and political stability so as to reduce defence expenditure to the benefit of economic development and growth.

16. The Parliamentary Select Committee, which submitted its final report in November 1993, reached agreement on:

(i) The establishment of two separate administrative units for the Northern and Eastern Provinces.

(ii) The adoption of a scheme of devolution on the lines similar to the Indian model;

(iii) The devolution of more subjects than those currently set out in the Concurrent List, or to dispense with that list.

Language

17. The 13th amendment to the Constitution recognized Tamil as an official language together with Sinhala, and English was designated a link language.

18. The Constitution also provides for the conduct of official business and of correspondence in both languages and the right to be educated and to be examined in either language. The law also makes provision for the use of Tamil as the language of administration and the courts in the north and east.

19. The Official Languages Department has been given the task of taking the necessary steps to implement the constitutional provisions relating to language.

20. The Department has so far taken the following steps:

(a) It has directed all government literature and signboards to be in all three languages.

(b) It has taken the initiative to teach Tamil to Sinhala-speaking public servants and Sinhala to Tamil-speaking public servants and English to all, through its programme "Peace through language".

(c) By circular No. 25/89 (1) of 1989 it required all government bodies to reply to all correspondence received in the language of such correspondence.

(d) It has launched a programme to educate the public concerning their right to use their mother tongue in all correspondence with the Government.

21. The Government established the Official Languages Commission by statute in 1991 with the further objectives of: recommending principles of policy relating to the use of the official languages; of monitoring and supervising compliance with the provisions of chapter 4 of the Constitution; and of taking all measures necessary to ensure the use of the languages referred to in article 18 of the Constitution, in accordance with the spirit and integrity of the Constitution. The Commission has also been empowered to conduct investigations in response to complaints received and to take remedial action.

Culture

22. In further recognition of the right of racial groups to promote and protect their culture, the Government established Ministries of State for Hindu and Muslim cultural and religious affairs.

23. The overall objective of the State Ministry for Hindu Religious and Cultural Affairs is the restoration, reinforcement and sustenance of the heritage and values cherished by the Hindus, and enhancement of the quality of life of the Tamil-speaking people.

24. Similarly the State Ministry for Muslim Religious and Cultural Affairs promotes and fosters the religion and culture of the Muslim community.

Employment

25. Recruitment at the national level, under the terms of Public Administration Circular No. 15/90, is in line with the national ethnic proportions, at the provincial level with the provincial ethnic proportions and at the district level with the district ethnic proportions. The proportion for the Sinhalese community is to be 75 per cent of the total number of vacancies. Tamils, persons of Indian origin and Muslims shall be selected for 12.7 per cent, 5.5 per cent and 8 per cent of vacancies respectively. If there is a difficulty in determining the exact numbers, a variation of minus or plus 2 per cent is permissible.

26. However, in Ramuppillai v. AG (1991 1 SLR 11), (see further below) the Supreme Court held that promotions based on ethnic quotas were violative of articles 12 (1) and 12 (2) of the Constitution on non-discrimination on grounds of race, etc., and that such a policy would place an employee at a disadvantage merely on account of race.

Article 3

27. Politically Sri Lanka has taken an uncompromising stand against apartheid and has steadfastly condemned it both at the United Nations and in other international forums. Sri Lanka has consistently supported and voted for all resolutions in the United Nations aimed at combating and eradicating apartheid in South Africa.

28. However, with the successful conclusion of multiracial elections in South Africa in April 1994, Sri Lanka has initiated steps to establish diplomatic ties with South Africa.

Article 4

29. In a multiracial society, partisan speeches which might incite communal antagonism and hatred must be prevented. Thus article 15 (2) of the Constitution recognizes that, in the interest of racial and religious harmony, the freedom of speech and publication may be restricted.

30. Furthermore, under the Penal Code of Sri Lanka, the Prevention of Terrorism (Temporary Provisions) Act and the Emergency Regulations (Miscellaneous Provisions and Powers), advocacy of racial and religious hatred that constitutes incitement to discrimination, destruction or violence is an offence.

Article 5

Equality before the law

31. Article 12 of the Constitution provides that all persons are equal before the law and entitled to equal protection under the law.

32. Article 12 (2) provides that no citizen shall be discriminated against on grounds of race, religion, language, caste, sex, political opinion or place of birth.

The right to security of person

33. Article 11 provides that no person shall be subject to torture or to cruel, inhuman or degrading treatment or punishment.

34. Also, Sri Lanka recently acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, with effect from 2 February 1994.

Political Rights

35. Sri Lanka's long history of parliamentary democracy began with the introduction of universal adult franchise in 1931 while still under British rule. Sri Lankan voters in the same year elected 50 members to the State legislature. The electoral process, which provides for free and fair elections through secret ballot, and in which all citizens participate, is conducted at periodic intervals. It is free of discriminatory practices. The average voter participation for the period between the attainment of independence and 1977 was 73.37 per cent.

36. The Sri Lankan political arena consists of nearly all political ideologies, and multiparty elections take place at regular intervals at the local government, provincial and national levels. A party which gains recognition by registering with the Commissioner of Elections is free

thereafter to campaign and contest all elections that are held. The vibrancy of the democratic process in Sri Lanka is reflected in the multiplicity of political parties which compete to gain electoral support.

37. Under article 4 (e) of the Constitution every citizen above the age of 18 is eligible to vote at elections.

38. Articles 90 and 91 set out the qualifications and disqualifications for being a candidate for election as a Member of Parliament.

39. The Constitution also makes provision for the electoral system to be followed and the times at which elections will be held.

40. Articles 103 and 104 of the Constitution provide for the office of an election commissioner for the purpose of ensuring impartiality, fairness and compliance with the law in respect of elections. As a matter of practice, after each election or referendum held by him the Commissioner of Elections issues a report containing his frank and comprehensive observations as to the conduct of the election or referendum and pointing out deficiencies in the electoral process. The Government of Sri Lanka attaches great significance to the observations of the Commissioner and his recommendations, in view of the independent and impartial nature of his office.

Other civil rights

41. Article 14, subparagraphs (h) and (i), guarantees the freedom of movement and of choosing a residence within Sri Lanka and the freedom to return to Sri Lanka. These rights, however, may be restricted in certain circumstances provided for in the Constitution.

42. Sri Lanka does not deny any person the right to leave the country. Thus a citizen cannot be denied a passport to leave the country unless he is being prosecuted for an offence and the court orders that he should not leave the country.

43. Every citizen has the right to choose his/her own spouse. There is no impediment to inter-racial marriages.

44. All citizens, irrespective of race, have the right to own property in any part of the island.

45. There is no bar to inheriting on the basis of race.

46. Article 10 of the Constitution guarantees the right to freedom of thought, conscience and religion.

47. Article 14 (a) (b) and (c) of the Constitution provide for the right of freedom of speech and expression including the right to publication, freedom of peaceful assembly and of association.

Economic, social and cultural rights

48. Article 14 (g) recognizes the right to engage in any lawful occupation, profession, trade, business or enterprise.

49. Sri Lanka being a developing nation, there is no constitutional protection of the right to work. However, all citizens, irrespective of race, have equal opportunity in the sphere of employment. In Ramuppillai v. AG (1991 1 SLR 11), the court upheld the principle of equality of opportunity of advancement in the Public Service irrespective of race, caste, religion, etc.

50. Article 14 of the Constitution provides for the freedom to form and join trade unions.

51. The citizens of Sri Lanka enjoy a free public health service, which is accessible to all without discrimination.

52. Sri Lanka follows a policy of ensuring rights to all citizens and makes no distinction on the grounds of race, colour or ethnic origin in the provision of education. It has a system of free education, which came into effect even before the country attained independence in 1948. This system provides free and open access to education, without any distinction, to children of all races, castes and religions, and a continuous education, free of cost, up to the completion of a degree course at university level. In addition to free tuition at all educational institutions, the State also provides free school textbooks to all schoolchildren. The provision of equal opportunities in education for all is further reinforced by a generous system of scholarships for students at the secondary level in schools and the universities to cover costs of subsistence.

53. There is a single national scheme of education throughout the country and all children sit the same national examinations at the end of the junior, secondary and senior levels. Admission to universities is on a competitive basis with some weightage given to children from disadvantaged areas.

54. Article 14 of the Constitution provides for the freedom to engage in and promote one's own culture.

55. In Sri Lanka, days of significance to Buddhists, Hindus, Christians and followers of Islam have all been declared public holidays and are given equal emphasis by the State.

56. The State media cater to all communities. The State television corporation broadcasts news in all three languages and, for entertainment, time is allocated to the three communities according to the ethnic ratio.

57. Article 12 (3) of the Constitution provides that no person shall on the ground of race be subject to any disability, liability, restriction or condition with regard to access to shops, public restaurants, hotels, places of public entertainment and places of public worship of his religion.

Article 6

58. Article 12 (2) of the Constitution provides that no citizen shall be discriminated against on the grounds of race, etc. Article 17, read with article 126, provides for the enforcement of this right. Infringement or imminent infringement of this right, whether by executive or administrative action, is justiciable in the highest court of the land, and the court has a wide discretion with regard to the relief that may be granted.

59. Besides the special jurisdiction of the Supreme Court to hear and determine specific allegations relating to the infringement or imminent infringement of fundamental rights by executive or administrative action, other civil and criminal courts of Sri Lanka are competent to entertain pecuniary claims and prosecutions arising from acts involving infringement of fundamental rights by executive or administrative action or otherwise.

60. The Constitution of Sri Lanka also provides that the Parliament shall by law provide for the establishment of the Office of the Parliamentary Commissioner for Administration, Ombudsman, charged with the duty of investigating and reporting upon complaints or allegations of the infringement of fundamental rights and other injustices by public officers and officers of public corporations, local authorities and other like institutions, in accordance with and subject to the provisions of such law.

61. Furthermore, the Commission for the Elimination of Discrimination and Monitoring of Fundamental Rights has the authority to hear and adjudicate upon allegations of racial discrimination by means of mediation and conciliation. Where settlement is not possible, it is authorized to report the matter to his Excellency the President. In 1992 the Commission heard 23 allegations of discrimination on the basis of race.

62. The constitutional provisions making discrimination on racial grounds justiciable would be meaningless in the absence of a virile and independent judiciary. Articles 7 and 110 (2) make elaborate provision to ensure the independence of the judiciary by security of tenure of office, salaries and disciplinary control of judges.

63. There is in addition a free legal aid scheme available for any person unable to afford the services of a lawyer. The Legal Aid Law No. 27 of 1978 provides for the grant of legal assistance to deserving persons and for that purpose has established the Legal Aid Commission and the Legal Aid Fund. Furthermore, every alleged act of racial discrimination is usually treated as a common cause and espoused as such.

64. The constitutional remedies referred to above are in addition to the remedy available to every citizen to obtain relief by way of writ in respect of every violation of a fundamental right regardless of whether such violation has occurred or is only imminent.

65. When allegations of racial discrimination or violence have been alleged there have been commissions of inquiry established under a presidential warrant. In 1979 a commission, chaired by a retired chief justice, was established to inquire into a report on allegations of communal violence in

the aftermath of the general election. More recently, a commission was set up to examine damage caused to the property of an opposition Member of Parliament who belonged to the Tamil community.

66. A measure of protection and remedial relief in respect of alleged violations of the provisions of the Convention would also arise from the rule of judicial interpretation adopted in Sri Lanka. Over a period of years, the courts have sought to interpret statutes on the presumption that the legislature intended to make law in accordance with the principles set out in the international instruments ratified or acceded to by Sri Lanka. Whilst this rule of interpretation did not go so far as ruling that legislation in conflict with the Universal Declaration of Human Rights was invalid, whenever the intention of the legislature was ambiguous the courts would interpret it to be in accord with and not in conflict with the relevant international instruments.

67. Except for a single case decided in 1990 there has not been any allegation of discrimination on the basis of race in the Supreme Court of Sri Lanka.

68. In Ramuppillai v. AG (1991 1 SLR 11), the petitioner, a Tamil superintendent of customs, was an applicant along with 52 other superintendents for 22 vacancies at the grade of assistant director of customs. He was tenth on the list by seniority, but on the application of ethnic quotas in terms of Public Administration Circular No. 115/90, 19 Sinhalese as against 3 Tamils would be promoted and the petitioner being in fifth place among the Tamils on the list would not be promoted. He argued that the Circular violated the principle of equality enshrined in articles 12 (1) and 12 (2) of the Constitution as he was placed at a disadvantage merely on account of race.

69. The Supreme Court upheld his argument. Fernando J. stated that "racial preferences or quotas for their own sake are not permissible because in a free republican democracy one citizen is as good as another and is entitled to equal treatment regardless of the group to which he belongs".

Article 7

Education and teaching

Human rights teaching in the past

70. The principle of equality of all human beings in respect of basic human rights has been emphasized in the study of different subjects in the teaching institutions of Sri Lanka. An examination of the teaching programmes in subjects like history, civics, government, political science, ethics and religion reveals that this objective was incorporated in their study during the last several decades. In recent years however a special effort has been made to organize the systematic achievement of this objective through education and teaching. The high enrolment rates as well as the uniformity of the school curriculum throughout the country are factors which are favourable to the implementation of national goals and plans in this sphere.

Recent innovations in schools

71. Human Rights concepts were introduced into the school curriculum as early as 1983 in response to the request made by the United Nations at the World Conference on Human Rights in 1978 to take meaningful steps to promote human rights awareness.

72. In pursuance to this request and in recognition of the fact that one of the main steps in the elimination of racial discrimination is the demolition of the myth of racial superiority and the need to emphasize the fact that all races form part of a common unit of human beings, human rights concepts were infused into the Social Studies and later History curriculum at secondary school level. Thus the curriculum now includes the study of discrimination in different parts of the world based on race, religion, colour, gender, etc., and the consequent denial of fundamental human rights.

73. In 1993, following an evaluation of a decade of human rights teaching in schools, the following recommendations were made to further improve the teaching programme.

(i) The development of an in-service programme to cater to the needs of all educational officers dealing in human rights;

(ii) Improvement of textbooks and preparation of a detailed syllabus and course guides;

(iii) School based assessment tasks to be built into the total teaching process;

(iv) Teaching to be improved by the use of more aids;

(v) Teaching programme to be given more publicity and the electronic media to be utilized for that purpose.

Human rights in primary schools

74. Human rights concepts have been taught in primary schools since 1985. At present the Department of Primary Education is in the process of expanding this programme. As a preliminary step a three-day workshop was held from 13 to 15 December 1993 at the Sri Lanka Foundation. The following are some of the concepts identified for teaching: the right to life, freedom of expression, respect for others and their views, etc.

Human rights in universities

75. A comprehensive course on human rights law was introduced as an optional subject in the final year of study in the Bachelor of Laws degree in the Faculty of Law at the University of Colombo in 1993. The course is conducted in English, Sinhala and Tamil. The course includes the study of the historical development and philosophical foundation of the concept of human rights and the universality of human rights, the relationship between international human rights norms and domestic promotion, protection of human rights, etc.

76. The Master of Law of the University of Colombo provides for Human Rights as a specialized field of study.

77. In addition, a human rights component has been incorporated into the undergraduate journalism programme of the Faculty of Arts. The course includes a general introduction to human rights, together with a detailed section on freedom of opinion and expression, which is of special relevance to journalists.

Culture and information

78. The Government of Sri Lanka recently established the Ministry of National Reconciliation as a step towards bringing about a reconciliation of all people of every race, religion and political opinion to ensure that Sri Lanka is equally the land of all its people.

79. Furthermore, it has been recognized that in a multi-ethnic and multilingual society ignorance of the language of other ethnic groups can be a major cause of contention and marginalization and that therefore every citizen should know all three languages including his/her mother tongue. In order to achieve this objective the Education Department has taken steps to teach Sinhala and English to the students in Tamil medium schools and Tamil and English in Sinhala medium schools. Similarly the "Peace through Language" programme of the Department of Official Languages assists public servants in gaining proficiency in all three languages. It is hoped that language may be utilized as an instrument of peace, coexistence and prosperity.

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